

RCRA MEMORANDUM OF UNDERSTANDING
BETWEEN THE
WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AND REGION VIII OF THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

I. Purpose and Applicability of the MOU

The Wyoming Department of Environmental Quality (DEQ) and Region VIII of the United States Environmental Protection Agency (EPA) enter into this Memorandum of Understanding (MOU) for the following purposes: facilitating the implementation of the State of Wyoming's Voluntary Remediation of Contaminated Sites program (VRCS), as reflected in W.S. 35-11-1601 *et seq.*, as amended and effective July 1, 2001, at sites where owners and operators are subject to regulation under hazardous waste laws; and ensuring that the federally authorized state hazardous waste program remains no less stringent than the federal hazardous waste program. This MOU is not part of and does not modify the EPA - Wyoming RCRA state authorization MOA executed pursuant to 40 C.F.R. §271.8.

This MOU addresses the implementation of the VRCS at sites and facilities located within Wyoming whose owners or operators are subject to the RCRA cleanup requirements (including corrective action and/or closure or post-closure care requirements) of Wyoming's hazardous waste management program, as authorized by EPA pursuant to the Resource Conservation and Recovery Act (RCRA). The term "RCRA facility" as used in the MOU will include treatment, storage and disposal facilities (TSDFs) and other sites or facilities that are subject to RCRA cleanup requirements. A separate Memorandum of Agreement (MOA) between EPA and DEQ is being executed for sites which are subject to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

II. Guiding Principles

- * The State is responsible for ensuring that cleanups at RCRA facilities in Wyoming are consistent with RCRA.
- * A facility subject to RCRA continues to remain subject to RCRA even if it is included in the VRCS program. A facility exits the RCRA system when all RCRA obligations have been satisfactorily completed by the responsible person(s) and the regulator.
- * EPA has an oversight obligation for the State's authorized program.
- * The State and EPA recognize that, to minimize the need for either EPA or DEQ to impose additional or supplemental requirements at a RCRA facility there is a need for state/EPA coordination throughout the cleanup process when the VRCS authority is used.

III. Background

Wyoming's VRCS was enacted during the 2000 legislative session, and was amended during the 2001 legislative session. The VRCS is intended to cover a wide range of circumstances, including remediation at facilities and sites subject to the federal RCRA or CERCLA programs. DEQ and EPA have met with numerous stakeholders, including public interest and industry groups, the public, and Wyoming legislators during the evolution of the VRCS. EPA believes the current Wyoming law provides sufficient discretion to DEQ so that it may implement the VRCS in a manner consistent with RCRA.

This MOU is intended to ensure that investigations and cleanups (collectively referred to as the "remedy" or "remedies") that are carried out under the VRCS at facilities subject to RCRA cleanup requirements are consistent with RCRA. For purposes of implementation of this MOU, RCRA cleanup objectives for TSDFs are as follows: 1) remedies are protective of human health and the environment; 2) facility-wide characterizations are required to determine the full nature and extent of releases; 3) all releases (both on-site and off-site) of hazardous wastes or constituents into the environment are addressed; and 4) meaningful opportunities for public involvement are provided for facilities subject to cleanup. DEQ has lead responsibility for making sure that these objectives are met. For RCRA facilities, other than TSDFs, DEQ has the discretion to apply objectives two and three above, however all remedies will be protective of human health and the environment and will provide meaningful and appropriate opportunities for public involvement.

After evaluation of the Wyoming VRCS program, EPA has concluded that the program is adequate because: it provides opportunities for meaningful community involvement; it ensures that voluntary cleanup actions are protective of human health and the environment; there are adequate resources to ensure that voluntary cleanup actions are conducted in an appropriate and timely manner, and that both technical assistance and streamlined procedures, where appropriate, are available from DEQ; the law provides mechanisms for the written approval of remedy agreements and a certification indicating that the remedial actions are complete; the program provides for adequate oversight to ensure that voluntary cleanup actions are conducted in such a manner to assure protection of human health and the environment; and there exists the capability, through enforcement or other authorities, of ensuring completion of response actions if the volunteering parties conducting the response actions fail or refuse to complete the necessary response actions, including operation and maintenance, institutional controls or long term monitoring activities.

IV. Implementation

As a general matter, and as more fully described in Section V below, EPA will defer to DEQ in overseeing clean-up activities at RCRA facilities entering the VRCS program. EPA does not anticipate taking action pursuant to RCRA at those TSDFs covered by this MOU where clean-up requirements meet the four RCRA clean-up objectives described in Section III of this

MOU in a timely manner. Further, EPA does not anticipate taking action pursuant to RCRA for releases at facilities other than TSDFs covered by this MOU where the remedy, undertaken in a timely manner, is protective of human health and the environment, and DEQ provides for meaningful and appropriate public involvement.

DEQ and EPA agree that the implementation of the VRCS program at TSDFs will be consistent with the State's existing authorized program. This includes, for example, those provisions relevant to closure, post-closure care, and groundwater corrective action. DEQ and EPA agree that DEQ has the authority under the Wyoming VRCS to impose corrective action requirements at RCRA TSDFs that meet the four RCRA cleanup objectives described in Section III of this MOU even though the process for site characterization and remedy selection under the VRCS is not identical to the traditional RCRA corrective action approach. DEQ agrees that remedies for RCRA TSDFs that are determined through the Wyoming VRCS program will meet the four RCRA clean-up objectives in Section III of this MOU. DEQ agrees that remedies for other RCRA facilities shall be protective of human health and the environment, and provide for meaningful and appropriate public involvement.

The Wyoming VRCS law establishes cleanup standards for contaminated sites that require restoration of contaminated soils to levels suitable for unrestricted future uses, and that require restoration of contaminated groundwater to levels suitable for drinking water even if the groundwater is not currently being used as a drinking water supply. Under the law, DEQ may set alternate soil standards if it is not technically practicable to restore soils to unrestricted use levels, or if local government agrees to impose land use restrictions on the property. Under the law, when land use restrictions are proposed as a part of a remedy, the owner must also evaluate technologies that could be used to meet unrestricted soil cleanup levels, and DEQ is empowered to select an unrestricted cleanup for soils even where the owner desires a higher residual pollution level based on land use restrictions. In such a case, DEQ will base its selection on a comparative evaluation of the eight "balancing" criteria specified in the VRCS law. If, after consideration of the "balancing" criteria, DEQ finds that an unrestricted soil cleanup remedy is more desirable than a restricted cleanup remedy, DEQ will select the unrestricted cleanup.

In implementing the VRCS at sites which are covered by this MOU, DEQ and EPA agree that cleanup options which will allow unrestricted land use will be evaluated, regardless of whether cleanup options restricting land use are ultimately selected, and DEQ will develop guidance covering the proper implementation and maintenance of institutional controls. This guidance will also clarify responsibility for, and reporting on, effective maintenance of institutional controls.

DEQ and EPA agree that each RCRA TSDF will be required to comprehensively characterize all releases to ascertain the full nature and extent of those releases.

DEQ and EPA agree that in its evaluation of a remedy proposal which relies on technical impracticability for groundwater, DEQ will employ a remedy decision framework for making RCRA technical impracticability determinations consistent with the September 1993 EPA Office of Solid Waste and Emergency Response "Guidance for Evaluating the Technical Impracticability of Ground-Water Restoration".

DEQ and EPA agree that DEQ has the authority to require, on a case-by-case basis, that cleanup requirements utilizing the technical impracticability provisions of W.S. 35-11-1605(d) will be appropriately reevaluated as technology changes, consistent with the federal RCRA program. Such reevaluation, if included as a component in a remedy agreement, shall specify that the owner or operator must consider site-specific factors when reevaluating new remediation technologies.

DEQ and EPA agree that, at a minimum, there will be public comment opportunities when a RCRA TSDF facility is accepted for participation in the VRCS when a draft remedy is proposed, and when DEQ has determined that the remedy is complete. As established in the VRCS, additional public comment opportunities will be defined through expanded public participation plans, when developed.

DEQ has the authority to require RCRA TSDFs to obtain any and all permits as required by the Wyoming Hazardous Waste Rules and Regulations. As required by W.S. 35-11-1605(g), an owner or operator of a TSDF who chooses to participate in the VRCS must comply with all state hazardous waste program requirements. Any RCRA permits issued by DEQ will require the owner or operator to perform facility-wide corrective actions as necessary to protect human health and the environment. For TSDFs that have permits, the remedy agreement must be incorporated into the permit as required by W.S. 35-11-1607(k). DEQ also has the authority to embody clean-up requirements into a remedy agreement. A remedy agreement is an enforceable document under the VRCS. Any violation of a remedy agreement or permit is a violation of the Environmental Quality Act subject to penalties and enforcement actions. DEQ will take necessary and appropriate action to ensure that the facility owner properly implements the remedy agreement.

V. Oversight and Reporting

The goal of EPA RCRA oversight is to ensure that State actions result in final cleanups that are protective of human health and the environment, consistent with the RCRA Subtitle C program, and that adequate progress is being made toward meeting environmental indicator (for baseline facilities) and final cleanup goals. EPA's normal oversight of DEQ's authorized RCRA corrective action program includes:

* discussing facility-specific corrective action activities and progress during mid-year and annual evaluations of DEQ;

- * reviewing selected files of RCRA-regulated facilities;
 - * field reviews of Corrective Action implementation;
 - * reviews of quarterly SEA reports;
 - * informal staff-to-staff coordination and communication;
 - * discussing RCRA Corrective Action technical and policy issues when necessary;
- and
- * reviewing and commenting on proposed permits and corrective action orders issued by DEQ.

EPA will continue to perform oversight of the State's RCRA program as described above, and will, using its normal oversight procedures, review DEQ's activities in managing clean-up requirements at RCRA facilities which opt to perform their cleanup under the VRCS. Consistent with EPA's oversight of other RCRA facilities where corrective actions are determined under a traditional RCRA approach, EPA is particularly interested in VRCS facilities that employ institutional or engineering controls as part of a cleanup remedy, instead of removing contamination to allow unrestricted land uses.

DEQ will continue to provide information to EPA concerning RCRA facilities which are undergoing cleanup. This information includes reporting on progress of each facility on a quarterly basis as part of the State/EPA agreement. DEQ will identify on such quarterly reports each RCRA facility that has been accepted as a VRCS program participant, and will document the facility's progress using appropriate RCRAInfo codes as is done for other facilities utilizing a traditional RCRA corrective action approach. DEQ also agrees that it will provide additional information about VRCS facilities which may be requested by EPA, and that EPA may inspect DEQ files on VRCS facilities as necessary to allow EPA to perform its oversight functions.

EPA oversight will be primarily focused on verifying that the activities in Section IV of this MOU have been appropriately accomplished.

Under the EPA's current oversight of DEQ's regulatory activities at RCRA facilities which use a traditional RCRA corrective action approach, if EPA believes that investigative or remedial alternatives are not consistent with RCRA clean-up requirements, or that such alternatives may not ensure adequate protection of human health or the environment, EPA will notify DEQ. Also under the current oversight process, EPA reserves the right to invoke any appropriate authorities it may have available to ensure adequate and timely protection of human health and the environment. For RCRA facilities in the Wyoming VRCS program, EPA continues to have its authority to review investigative or remedial alternatives to ensure that remedial actions are consistent with RCRA requirements and are protective of human health and

the environment. Additionally, EPA continues to have the right to invoke appropriate authorities to ensure protection of human health and the environment at RCRA facilities in the Wyoming VRCS program.

For RCRA facilities using a traditional RCRA corrective action approach, EPA has authority to determine that circumstances at a facility may present an imminent and substantial endangerment to health or the environment. EPA continues to have this authority for RCRA facilities that participate in the Wyoming VRCS program. For any RCRA facility, including those in the VRCS program, EPA may consult with DEQ if it finds an imminent or substantial endangerment condition, and may allow DEQ to act to remedy that condition. EPA may set limitations on discussions as it determines are necessary, including determining persons who may participate, and the time period for such discussions. If EPA determines that a discussion period is not acceptable, EPA may issue orders, for example, under section 7003 of RCRA as it determines necessary to protect health or the environment. EPA will provide the notices required under the authority invoked.

VI. VRCS Implementation Strategy

DEQ will notify EPA when VRCS program regulations, guidance or policy documents have been proposed, and will seek EPA comments during any public comment period. EPA may review any VRCS proposed rule, guidance or policy document to determine whether Wyoming's VRCS continues to allow DEQ to develop remedy agreements at RCRA facilities that meet the RCRA corrective action objectives listed in Section III of this MOU.

DEQ has established several work groups of DEQ staff and interested parties as part of the process to develop rules, guidance and policy documents necessary to implement the Wyoming VRCS program. DEQ has extended an invitation for EPA staff to participate on these working groups, to allow working group members to have the benefit of EPA's technical expertise in the area of remediation of contaminated sites, and to allow EPA staff to gain familiarity with the VRCS program's implementation materials.

VII. Modification

This MOU has been developed by mutual cooperation and consent, and is considered to be an integral part of the working relationship between EPA and DEQ.

EPA enters into this MOU based on a review of W.S. 35-11-1601 *et seq.*, as amended and effective July 1, 2001. DEQ agrees to provide EPA with prompt notice of changes to the laws, regulations, guidance, and practices that impact the Wyoming VRCS.

This MOU may only be modified by mutual written agreement of both Parties, or it may be terminated by one Party after providing written notice to the other party.

VIII. Recitation of Rights and Intent

This MOU is intended to complement the RCRA and VRCS programs. Nothing in this MOU modifies EPA's or DEQ's responsibilities, obligations, or authorities under state or federal law, or DEQ's responsibilities to fully implement RCRA's requirements.

This MOU is solely between EPA and DEQ, for the exclusive benefit of the working relationship between EPA and DEQ, and is not intended to be, nor is it enforceable by any party in any administrative or judicial forum. Nothing herein is intended to, and this MOU does not create any rights, obligations, responsibilities, expectations or benefits in any third parties. This MOU does not authorize or assure funding for DEQ's VRCS by EPA.

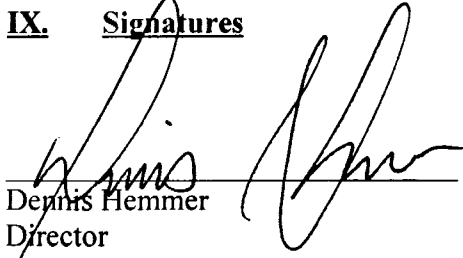
Notwithstanding any other provision of this MOU, nothing herein affects or limits EPA's or DEQ's authority or ability to take any enforcement action authorized by law.

EPA and DEQ reserve any and all rights or authority that they respectively have, including but not limited to, legal, equitable, or administrative rights. This specifically includes EPA's and DEQ's authority to conduct, direct, oversee, and/or require investigation and/or remediation pursuant to RCRA, or any other federal or state law, at any facility or site which participates in the VRCS.

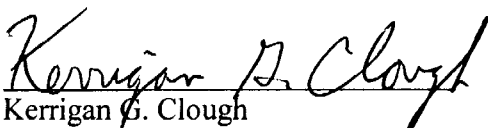
If, following the issuance of a no further action letter, or a covenant not to sue, pursuant to the VRCS, or at any other time during the VRCS process, EPA determines that conditions at the site are not protective of human health or the environment, EPA reserves the right to take or require the appropriate action to protect human health or the environment.

Nothing in this MOU shall affect the eligibility of a potentially contaminated site to participate in the Wyoming VRCS program pursuant to Wyoming law.

IX. Signatures



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